

Effective 3/28/2016

63G-6a-506 Small purchases.

(1) As used in this section:

- (a) "Annual cumulative threshold" means the maximum total annual amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain procurement items from the same source under this section.
- (b) "Individual procurement threshold" means the maximum amount, established by the applicable rulemaking authority under Subsection (2), for which a procurement unit may purchase a procurement item under this section.
- (c) "Single procurement aggregate threshold" means the maximum total amount, established by the applicable rulemaking authority under Subsection (2), that a procurement unit may expend to obtain multiple procurement items from one source at one time under this section.

(2)

- (a) The applicable rulemaking authority may make rules governing small purchases of any procurement item, including construction, job order contracting, design professional services, other professional services, information technology, and goods.
 - (b) Rules under Subsection (2)(a) may include provisions:
 - (i) establishing expenditure thresholds, including:
 - (A) an annual cumulative threshold;
 - (B) an individual procurement threshold; and
 - (C) a single procurement aggregate threshold;
 - (ii) establishing procurement requirements relating to the thresholds described in Subsection (2)(b)(i); and
 - (iii) providing for the use of electronic, telephone, or written quotes.
 - (c) If a procurement unit obtains administrative law judge service through a small purchase standard procurement process, rules made under Subsection (2)(a) shall provide that the process for the procurement of administrative law judge service include an evaluation committee described in Subsection 63G-6a-707(3)(a).
- (3) Expenditures made under this section by a procurement unit may not exceed a threshold established by the applicable rulemaking authority, unless the chief procurement officer or the head of a procurement unit with independent procurement authority gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.
- (4) Except as provided in Subsection (5), an executive branch procurement unit may not obtain a procurement item through a small purchase standard procurement process if the procurement item may be obtained through a state cooperative contract or a contract awarded by the chief procurement officer under Subsection 63G-6a-2105(1).
- (5) Subsection (4) does not apply if:
- (a) the procurement item is obtained for an unanticipated, urgent, or emergency condition, including:
 - (i) an item needed to avoid stopping a public construction project;
 - (ii) an immediate repair to a facility or equipment; or
 - (iii) another emergency condition; or
 - (b) the chief procurement officer or the head of a procurement unit that is an executive branch procurement unit with independent procurement authority:
 - (i) determines in writing that it is in the best interest of the procurement unit to obtain an individual procurement item outside of the state contract, comparing:

- (A) the contract terms and conditions applicable to the procurement item under the state contract with the contract terms and conditions applicable to the procurement item if the procurement item is obtained outside of the state contract;
- (B) the maintenance and service applicable to the procurement item under the state contract with the maintenance and service applicable to the procurement item if the procurement item is obtained outside of the state contract;
- (C) the warranties applicable to the procurement item under the state contract with the warranties applicable to the procurement item if the procurement item is obtained outside of the state contract;
- (D) the quality of the procurement item under the state contract with the quality of the procurement item if the procurement item is obtained outside of the state contract; and
- (E) the cost of the procurement item under the state contract with the cost of the procurement item if the procurement item is obtained outside of the state contract;
- (ii) for a procurement item that, if defective in its manufacture, installation, or performance, may result in serious physical injury, death, or substantial property damage, determines in writing that the terms and conditions, relating to liability for injury, death, or property damage, available from the source other than the contractor who holds the state contract, are similar to, or better than, the terms and conditions available under the state contract; and
- (iii) grants an exception, in writing, to the requirement described in Subsection (4).
- (6) Except as otherwise expressly provided in this section, a procurement unit:
 - (a) may not use the small purchase standard procurement process described in this section for ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold; and
 - (b) shall make its ongoing, continuous, and regularly scheduled procurements that exceed the annual cumulative threshold through a contract awarded through another standard procurement process described in this chapter or an applicable exception to another standard procurement process, described in Part 8, Exceptions to Procurement Requirements.
- (7) This section does not prohibit regularly scheduled payments for a procurement item obtained under another provision of this chapter.
- (8)
 - (a) It is unlawful for a person to intentionally or knowingly divide a procurement into smaller procurements with the intent to make a procurement:
 - (i) qualify as a small purchase, if, before dividing the procurement, it would not have qualified as a small purchase; or
 - (ii) meet a threshold established by rule made by the applicable rulemaking authority, if, before dividing the procurement, it would not have met the threshold.
 - (b) A person who engages in the conduct made unlawful under Subsection (8)(a) is guilty of:
 - (i) a second degree felony, if the value of the procurement before being divided is \$1,000,000 or more;
 - (ii) a third degree felony, if the value of the procurement before being divided is \$250,000 or more but less than \$1,000,000;
 - (iii) a class A misdemeanor, if the value of the procurement before being divided is \$100,000 or more but less than \$250,000; or
 - (iv) a class B misdemeanor, if the value of the procurement before being divided is less than \$100,000.
- (9) A division of a procurement that is prohibited under Subsection (8) includes doing any of the following with the intent or knowledge described in Subsection (8):
 - (a) making two or more separate purchases;

- (b) dividing an invoice or purchase order into two or more invoices or purchase orders; or
 - (c) making smaller purchases over a period of time.
- (10) The Division of Finance within the Department of Administrative Services may conduct an audit of an executive branch procurement unit to verify compliance with the requirements of this section.
- (11) An executive branch procurement unit may not make a small purchase after January 1, 2014, unless the chief procurement officer certifies that the person responsible for procurements in the procurement unit has satisfactorily completed training on this section and the rules made under this section.

Amended by Chapter 237, 2016 General Session

Amended by Chapter 348, 2016 General Session

Renumbered and Amended by Chapter 355, 2016 General Session